posed that the record and registration of marriages might be instituted and maintained, in rural areas, by means of an executive order, and, in the towns under the Towns Conservancy and Improvement Regulation, their registration should be made compulsory by embodying a penal provision in the Regulation.

Dewan's reply.—Noted.

25. Certain matters connected with the working of the Jenmi and Kudiyan Regulation (V of 1071) and the need for amending the Regulation.

[The Dewan put it to the Jenmi Members to consider whether it would not be advisable for them to meet and discuss the question, and place the several amendments that might be necessary in the law in the form of a joint memorandum.

Messrs. *Thrivikraman Vasudevan* (Member, Nominated), *Kesavan Vasudevan* (Member, Jenmi, Padmanabhapuram Division), *Vasudevan Damodaran Namburi* (Member, Nominated), *Narayanan Janardanan* (Member, Jenmi, Trivandrum Division) and *Narayanan Kadambar Namburipad* (Member, Jenmi, Kottayam Division) then talked over the matter between themselves, and they said that Mr. S. N. Krishna Iyer, (Member, Nominated), who was their legal adviser, would at once speak on the Jenmi—Kudiyan problem generally, and that they would place their joint memorandum of amendments to the Regulation before the Assembly on a subsequent day.]

Mr. S. N. Krishna Iyer B. A., B. L. (Member, Nominated) treated his subject of 'Examination and analysis of the Jenmi-Kudiyan problem' under the following heads.

(1) *The origin and nature of the Jenmom right.*—There were two theories regarding it. The first was that Parasurama created Kerala by reclamation from the sea, parcelled it out into sixty-four villages, and assigned them as free gifts to the Brahmins whom he brought from the East Coast, to be enjoyed by them and their descendants in perpetuity. The right of each holder over his land was known as his 'Jenm', which technically meant a hereditary right to free-hold lands, not liable to any taxation. The second and the more plausible theory was that Kerala sprang into existence from the bed of the ocean, as the result of a tremendous upheaval of the earth in the most remote period of time, due to convulsions of nature. The newly formed sea-board was colonised by Aryans who, having overflown the table-lands of Central India, had been gradually pressing towards the south. The Brahmins appeared to have been the first settlers and they naturally and rightly claimed absolute proprietorship over the lands in their occupation. One of the above theories must be correct. One point that had gained universal acceptance was the absolute ownership of the Jenmies over their lands. The ownership was complete and extended to everything standing or growing on the soil and to everything underneath it.

(2) *The conditions under which the Jenmies put the Kudiyans in possession of their properties.*—The rights, as they previously existed, of Jenmies and kanom-holders had to be first stated in order to determine in what respects amending legislation was called for and how such legislation affected them. In that connection, it had to be noted that the land tenures in British Malabar and Native Cochin were similar to those in Travancore and that there was a large number of tenants in those countries enjoying properties on *kanapattom*. Observations and opinions regarding the *kanom* tenure in Cochin and Malabar would apply with equal force to the Travancore *kanoms* also. The *kanom* demise had been always held to be a resumable one and the right of redemption was placed beyond the pale of controversy by the writings of eminent enquirers. For over a century and a half, the position had been consistently upheld that the Jenmi had such a right. The Member then quoted the opinions of several eminent gentlemen in support of the view He said that the Cochin Tenancy Commission had also subscribed to the same view. The Commissioners stated in their report that the Jenmi was not merely a farmer of revenue or a co-proprietor of the soil, but had the property in the soil vested exclusively in him and that he had the

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right to redeem the lands leased by him. As for the views the administrators and legislators had taken in Travancore, there was no record of disagreement in the matter. Raja Sir. T. Madhava Row, a staunch advocate of tenant rights and the author of the Royal Proclamation of 1042, never questioned the conditions of the *kanom* tenancy. He fully admitted that the tenants were let into possession on the understanding that the tenure was a redeemable one, but only contended that, by force of custom, the tenure acquired an irrevocable character. Mr. T. Kunhiraman Nair, President of the Travancore Jenmi Commission appointed in 1060, in his memo on Land Tenures, where he gave an account of the origin and development of *kanapattoms*, said that "neither the lease with security nor the mortgage was ever considered as conferring a permanent right of occupancy on the tenant beyond the period expressly or impliedly fixed in the documents". Permanent rights in property were created in the case of servants, vassals and dependants by grants of lands on *adima*, *anubhogam*, *thiruvulam* &c. and in the case of strangers as *erakaraima*, *nerkaraima*, &c. The existence of such tenures, said Mr. Kunhiraman Nair, "put it beyond all doubt that *kanom*, *otti* and *panayam* are resumable or redeemable".

(3) *The creation of fixity of tenure in Kudiyans by legislation.*—It was the Proclamation of 1042 that took away the power of ouster from the Jenmies. The grant of permanency of holding had practically transferred that property from its real owner, the Jenmi, to a person who had only a money charge on it. It had worked a revolution in the system of land tenure in Travancore. The grounds upon which the above legislation was sought to be justified by Raja Sir T. Madhava Row were the following, *viz.*,

(*a*) The Jenmies had not been in the habit of ejecting *kanapattom* tenants at pleasure or even at distant intervals. That could be accounted for only on the supposition that the tenure was an irrevocable one.

(*b*) There was scarcely a single instance traceable in the records of litigation in which a Jenmi even so much as put forth a claim to redeem lands given out on *kanapattom* as a matter of right of redemption.

(*c*) Tenants had built substantial houses, churches, and pagodas on *kanom* lands.

(*d*) In the case of *kanom* lands, the Sirkar registered the property in the tenant's name and gave him patta.

(*e*) For the rapid improvement of landed property, the land should be in the hands of those who were able to spend labour and capital, and, in their hands, it should be on a secure tenure. The Jenmies were unfit to carry on cultivation under their own management and were too needy to spend any capital on improvements.

The Member dealt with each ground critically, quoting many books of authority, and he questioned the validity of the conclusions arrived at. He further pointed out that, before the issue of the Proclamation of 1042, no Committee had been appointed to institute an enquiry into the relation of land-lord and tenant, no evidence was collected to form the foundation for legislative interference and no opportunity was afforded to the parties affected to controvert the arguments advanced against them. The Member next said that it was also worthy of note that the Cochin Government, to whom Sir T. Madhava Row suggested the enactment of a law similar to the Proclamation, did not think it necessary to do so. Further, as President of a Special Commission in Madras, Sir Madhava Row was not able to carry out what he very easily accomplished as Dewan in Travancore.

(4) *The justice of the Proclamation of 1042 and the Jenmi-Kudiyan Regulation of 1071.*— The Jenmies leased their lands on *kanom* in the full belief that they would be able to redeem the lands. The Proclamation deprived the Jenmies of their valuable proprietary rights and made them pensioners of their tenants. Regulation V of 1071, the present Jenmi and Kudiyan Regulation, instead of restoring the right of redemption at least in the case of poor Jenmies, extended the rule of deprivation of the right of ouster to non-Brahmin Jenmies also.

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In conclusion, the Member said that he had no constructive proposals to make, nor did he intend going into the details of the existing Regulation. His only object in dealing with the subject was to clear the ground, to create in the minds of the rulers greater interest in the Jenmi and Kudiyan problem, and to point out that justice had not been meted out to the Jenmies either by the Proclamation of 1042 or by Regulation V of 1071, that Jenmies had lost their wealth and had been reduced to penury for no fault of theirs, and that the present situation called for a reconsideration of the entire question at the hands of a Special Commission composed of accredited representatives of both Jenmies and Kudiyans and a few responsible officers of the State.

Dewan.—The question is not whether Sir Madhava Row's view then was right or wrong. The state of affairs created by him has been in existence for 40 years and a lot of rights have sprung up since on that basis. It is now out of the question to go back upon it.

Member.—I do not see why it should not be possible. If Sir Madhava Row, by his Proclamation of 1042, could take away the rights that had sprung into existence till then, it is not clear why the Government need now hesitate to go back upon the Proclamation.

Dewan.—It is not a question of impossibility but one of unwisdom. It is quite probable that, in the actual working of the Regulation, there are a great many hardships. It is one thing to ease the situation by taking the needful action in matters of detail, and a quite different thing for the Government now to set back things to what they were 40 years ago. In other words, you are objecting to the present situation, not on grounds of actual inconveniences which have arisen, but on grounds which you think should have been in the minds of those who are responsible for the present situation. The Commission you propose is, I believe, for instituting an elaborate enquiry into the state of affairs which existed prior to the Royal Proclamation of 1042, so that the country may be put back into the place which it had occupied prior to 1042.

Member.—Yes, Sir. But I say that the entire question should be considered, and, if my view be found to be correct, the law should be changed.

Dewan.—If the Jenmies would specify the provisions of the Regulation which cause them actual inconvenience or hardship, that can be considered and action taken to ease the situation without any violent disturbance of the existing situation. The representations of the Member are noted.

Mr. Vareed Ippe (Member, Ettumanur Taluk) observed that it was 18 years now since the Jenmi and Kudiyan Regulation, V of 1071, was passed. During that interval, the several provisions of the Regulation were being interpreted in different ways by both the Jenmies and the Kudiyans, and much to the ruin of both, disputes and litigation were ever on the increase. The Member proceeded to deal with the several Sections *seriata*.

(1) *Section 2* laid down that "nothing in this Regulation shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication, modified or abolished by, its provisions". It was not the intention of the Mover, Mr. P. Thanu Pillai, as could be seen from his statement of objects and reasons of the Bill, to recognise any customs or customary rights not recognised by the law proposed. The changes which the Section underwent had given rise to considerable hardships to the tenants. Every Jenmi set up new customs and worried his Kudiyans. He also included, in new documents, customs which never existed and put them forward as evidence of such customs against his recalcitrant tenants. It was therefore imperative that the Regulation should clearly specify the customs and rights recognised by it.

(2) *Section 3, Clause (1).*—Lands lying within the boundaries of, or contiguous to, or in excess of the original measurements of, *jenmom* lands in the

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enjoyment of tenants, were often improved by the latter and registered in the names of the Jenmies as *puthuval*. The tenants of course paid the *tharavila*, arrears &c. for the Jenmies and obtained the registry in the latter's names. According to the present definition of '*jenmom land*', lands of the kind referred to above would not fall under that category. Owing to that defect in the law, the Jenmies often tried to vacate the tenants from such lands. The definition should therefore be modified so as to include within its purview all lands lying contiguous to *jenmom* lands, and registered in the names of the Jenmies as *puthuval* subsequent to 1012, which were in the possession and enjoyment of the tenants and on which the tenants paid the full assessment in the Jenmies' names as *vakappadi*.

(3) *Section 3, Clause* (5).—The definition purported to include under "*kanom*" "the value of improvements made by Kudiyans and treated as *arthom* or consideration." In practice, the tenants did not get the benefit conferred by that wholesome provision. In calculating the *michavaram*, the Kudiyans were given credit to the extent of three-fourths of the yield of the trees planted by them, as *naduvukur*. The Member said that the amount of *naduvukur* should be regarded as equivalent to 4 per cent interest and that the capital calculated accordingly should be included in the *kanom*. The definition should be suitably modified to effect that object.

(4) *Section 3, Clause* (12).—*Onakalcha* and other dues were prescribed as payable to the Jenmi. It was necessary to define what dues should be paid and at what rates and on what occasions. He proposed that the words "or custom" at the end of the clause be omitted, as that portion enabled the Jenmi to create new customs.

(5) *Section 6*, in effect, prohibited the transfer of the Kudiyan's right without the written consent of the Jenmi. In the present condition of things, family properties must, of necessity, be partitioned. It was open to the Jenmi to apportion his *michavaram* in accordance with the partition deed and recover it from the several heirs in proportion. The restriction to take the Jenmi's consent should therefore be removed.

(6) *Section 8*.—The words "other than wild trees of spontaneous growth" in Clause (1) should be expunged. Owing to that expression, the tenant's right to fell wild trees or other growth even for *improving* the property was questioned and it gave rise to many suits in the civil and criminal courts.

The Member pointed out that Clause (2) was also not clear. Further, if the Kudiyan had received an advantage or if there was a distinct contract for the improvements made by him, there would be no room for dispute about such improvements. The clause was therefore superfluous and should be omitted.

(7) *Section 12* provided for compulsory renewal of the *kanapattom* every twelve years. The period was far too short and was not in keeping with the custom obtaining in the country or the spirit of the Royal Proclamation. The Revenue Settlement was conducted only once in 30 years. The period of renewal should also be fixed at 30 years.

(8) *Section 14* provided for the reduction of interest on the *kanom* and corresponding enhancement of the *michavaram*. It would be but just that, in the interests of the Kudiyan, there should also be a provision to *reduce* the *michavaram*, if the interest fixed be found to be more than the rate prevailing in the *proverthi*.

(9) *Section 22* made provision for the assessment of the *pattom*. The section opened the door for endless litigation between Jenmies and Kudiyans about the mode of assessment of the *pattom*. It was not right that the Jenmi should seek to enhance the *pattom*, as he rendered no manner of assistance to the Kudiyan by money or in other ways to improve the value of the property. The section should be cancelled.

(10) *Section 27*.—The provision permitting the Kudiyan to deposit in the Munsiff's Court the *michavaram*, renewal fees, or other dues in cases in which they were not accepted by the Jenmies, was not being availed of. The Member suggested that the Government should take power under the Section to frame rules for

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regulating the payment of the Jenmies' dues by the Kudiyans and to permit, by rules, the remittance of such dues by revenue hundis, direct to the Jenmies. Such a procedure would be good for the Kudiyans as also for the Jenmies.

In conclusion, the Member said that he mentioned the above points only to show that the Regulation stood in need of a great deal of modification. If the Kudiyans had also been allowed to be represented by a Member in the Assembly, their grievances would have been more freely ventilated from year to year. Most of the Members of the Assembly were probably owners of *pandarapattom* lands. He therefore prayed for the appointment of a Kudiyan Member in the Assembly every year and also of a Commission to enquire into and report on the present working of the Regulation and the modifications required therein.

Mr. T. K. Velu Pillai B. A., B. L. (Member, Trivandrum taluk) observed, with reference to Mr. S. N. Krishna Iyer's address on the Jenmi-Kudiyan problem, that the irredeemability of *kanom* holdings in Travancore was a settled fact and that the Government had no right to reopen the question. He said that the Jenmi and Kudiyan Regulation was a subject of constant discussion in the Sri Mulam Popular Assembly and was brought up both by the tenants and the Jenmies. He examined the relative position of the Jenmies and tenants and observed that the Jenmies occupied a position of great advantage. The Government had also allowed them liberal concessions in many matters. The Jenmi was in fact the spoilt child of favors. The Member next considered the circumstances that led to the passing of Regulation V of 1071. In his opinion, the Regulation was a matchless weapon in the hands of the Jenmies, while it curtailed several rights of the tenants established by the custom of centuries and recognised by the Royal Proclamations of 1005 and 1045 M. E., which were the *magna charta* of the Travancore tenant.

The Member next dealt with the hardships suffered by the tenants under the present working of the Regulation.

(1) In the first place, the Regulation was incomplete in that it did not fully define the rights and liabilities of the landlord and tenant. Reference was made in it to the custom of the country, but the appeal to custom was often mischievous in its effects as the usages were found to vary in different parts of the country. It therefore became very easy for a Jenmi to set up customs which did not exist and for the Kudiyan to deny those which did exist. The natural development of such differences led to protracted litigation and culminated in mutual ruin. Such a state of things could be averted if there was an authoritative pronouncement by the legislature as to which of the customs were valid and should be acted upon by Courts of Justice. The Jenmi and Tenant Commission had framed a valuable record of those customs, but unfortunately it had not yet been stamped with the authority of the legislature and published for general information.

(2) The second alteration necessary was as regards the dues taken by the Jenmies. Some of them were of merely antiquarian interest. In the infancy of civilization, the alienation of immovable property was a matter of no small difficulty and required the observance of a good many formalities. It was in formalities of that nature that the dues, now known as *olappanam*, *oppusoochi* and *sakshi*, had their origin. The demand for those payments might not have been altogether meaningless at the time of their inception. But, in the present days of stamp paper and registered deeds, the claim to *olappanam* was surely untenable. The claim to *oppusoochi* became still more ridiculous, because it was the duty of any honest man who received a thing of value to give some kind of acknowledgment. Similar remarks would hold good in the case of some of the other dues claimed by the Jenmies. Under Section 26 of the Regulation, in the case of a transfer of *jenmom* right, it was competent to the Kudiyan to call upon the transferee to commute customary dues into a fixed annual payment. Many of those customary dues were originally intended to be of help to the Brahmin Jenmies in the observance of religious ceremonies. The tenants should be considered to pay those dues of their own pleasure, although long usage appeared to give it the character of a duty. Anyhow, the injustice of allowing non-Brahmin,

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or, for that matter, non-Hindu purchasers of *jenmom* rights, to claim those dues, was too patent to need any lengthy discussion.

(4) The next point was the unwillingness of the Jenmies to give a single document for all the pieces of land held by the Kudiyan. Nothing was more inequitable than to demand money and other perquisites at every time the Jenmi executed a document to the tenant, for there was absolutely no consideration for the same. Yet the Jenmi frequently indulged in black-marking the tenants not only by insisting that separate documents should be taken as of old, but he also put pressure on the tenant to split up his holding and take separate documents for the different portions. There was a certain ruling of the High Court deprecating the practice, but lately a Full Bench had held that the Jenmi could insist on the tenant taking different sets of documents for different properties.

(5) He next advocated the abolition of the prohibition touching the splitting up of *jenmom* land. When, for example, a tenant died and the holding was partitioned out among his heirs, each of such heirs might be presumed to be desirous of improving the holding. But as each portion was liable for the arrears of dues on all of them, the tenants became indifferent in the matter of making improvements on the holdings. For, the land which was improved at the expense of one's own labour and capital would probably be sold for the default of another. The evil affected most prejudicially the Nair, Christian and Eazhava communities, for, in those communities, partitions between the members were of frequent occurrence. Such a pernicious state of affairs had to be done away with at the earliest opportunity. It might be made obligatory on the part of tenants to keep the Jenmi informed of the changes in the title from time to time.

(6) The Member next referred to the much debated question of wild trees which grew spontaneously on the tenant's holding. The law was that such trees belonged to the Jenmi. That was a serious anomaly. It was admitted on all hands that the tenant's holding was not redeemable except under certain distant contingencies. Till then, the Jenmi had no manner of right over the trees. The land was the tenant's; he could cultivate it as he liked, he could alienate it according to his pleasure and it was liable to be sold for his debts. But he could not cut down a wild tree that grew on the land. It was high time that such an bojectionable custom was done away with.

(7) Another disability was in the payment of compensation for *jenmom* lands acquired by the Government. Under the present rule, the Kudiyan could get only one-fourth, and the remaining three-fourths went to the Jenmi. The Jenmi had parted with his land, reserving only his *michavaram*, renewal fees and a few other minor items. He could not therefore claim anything more. In the public land records, the holding stood in the tenant's name, and it was he who cultivated it and took the produce. It was the tenant again that suffered most when the land was acquired for the use of the Government. Under such circumstances, the tenant alone was entitled to the price of the land, after reserving the capitalised value of the *michavaram*, the renewal fees and the customary dues for the benefit of the Jenmies. A final decision on the point was necessary, and it was desirable that the legislature should take up the matter without delay.

(8) The next point was with regard to the remission of the *michavaram* when there was a total or partial failure of crops. The justice of making such remissions required no elaborate argument. The custom of the country favoured such remissions and the most grasping land-lord found it impossible to go against the widespread usage. The Government also was constrained to make remissions of land-tax for the same reason. It was therefore a piece of the most flagrant injustice that the Jenmi, alone should be allowed to exact his dues to the very cash, while the tenantry was spending days and nights in starvation consequent on failure of crops. The rectification of the mistake in the law was urgently called for by the requirements of justice and fair play.

(9) Another hardship, which the unfortunate tenant smarted under, consisted in the very high rate of interest which he had to pay to the Jenmi if the *michavaram*

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and other dues were not paid in time. Interest at the rate of 18 per cent per annum was usurious and in the nature of a penalty. The rate of interest required reduction.

(10) The next point was in regard to the assignment of *michavaram* by the Jenmies. The Jenmies often borrowed large sums of money at high rates of interest. The usual way of paying the interest on their swelling debt was by assigning their *michavarams* to those creditors who advanced them the necessary funds. The law required that the *michavaram* should be paid in paddy at the granary of the Jenmi. The assignee often lived far away from the place where the holding was situate and the unfortunate tenant had to put himself to heavy expense in carrying the paddy to the assignee's door. The evil was augmented by the frequent disputes regarding the capacity of the measures used in measuring the paddy and the difficulty was still more enhanced by the disputes regarding the price of paddy when the Jenmi's dues were commuted into money. Differences like the above precluded the matter being settled out of court; and when litigation commenced, the Jenmi claimed his arrears of *michavaram*, renewal fees and customary dues, all in a lump. The tenant was obliged to pay all the dues together with interest and the costs of suit. The evil required to be remedied.

(11) There was one other matter which went to increase the litigation between the Jenmies and Kudiyans. The Jenmi was exempted from appearing in Court. Section 37 of the Regulation allowed any agent or *vicharippukar* of a Jenmi empowered in his behalf by a written authority under the hand of the Jenmi to be deemed a recognized agent. That gave rise to great mischief in that it afforded scope to the Jenmi's servants and other hangers-on to obtain the Jenmi's signature to any document that might be placed before him. The tenant had thus to answer to all the irresponsible persons who set the law in motion against him.

In conclusion, the Member said that the above and several other hardships suffered by the Kudiyans had been the subject of repeated representation to the Government by the Members of the Popular Assembly. The Jenmies took the hint and resolved to out-do the tenants in agitation. The amendments desired by both parties were referred by the Government to the High Court and the Division Peishkars for opinion. On receipt of their replies, the Government issued a G. O. No. J 3485, dated the 23rd July 1911, agreeing with their opinion, and they decided that no change in the Jenmi and Kudiyan Regulation was called for. The working of the G. O. had a most discouraging effect on both the parties, and especially on the tenant, whose grievances were great and required immediate redress. The relation existing between the Jenmies and Kudiyans did not fall within the current duties of a Peishkar and the work of the High Court was to administer the law as it stood. So, when both the parties had sought for the interference of the legislature, the safest course would have been to consult them both and make such amendments in the law as were practicable. Until that was done, the friction between the Jenmies and tenants would continue unabated and the agitation regarding the subject would be a permanent item in the programme of the Sri Mulam Popular Assembly. He therefore earnestly prayed for a review of the order and for steps being taken to amend the Regulation suitably.

Mr. Ebrahim Sait Joosa Sait (Member, Chirayinkil taluk) observed that there was at present no fixity about the nature of the dues payable to the Jenmies by the Kudiyans holding Brahmaswom and Devaswom lands under them. The courts also pronounced conflicting decisions in the matter. The result was that both the Jenmi and the Kudiyan were ready to rush to Court. If the dues were clearly specified, such ruinous litigation could be minimised, if not altogether avoided.

Another trouble was that the *michavarom* and other dues to the Jenmi were payable in paddy. The paddy, if offered when the Kudiyan had it ready, would not be accepted. To get a receipt for the paddy paid, it was not only necessary to bribe the agent of the Jenmi, but also to measure out 50 per cent more than the real quantity of paddy due. It was equally a losing concern to deposit the dues in Court. The best arrangement, under existing conditions, would therefore be to

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fix a commutation rate in money for the Jenmies' dues, in the same way as had been done for the land-tax due to the Government, and make the dues payable at that rate. That would be a lasting boon to the Kudiyans and it could not be reasonably objected to by the Jenmies either.

[The Dewan having invited the opinion of *Mr. Narayanar Janardanar* (Member, Jenmi, Trivandrum Division) on the Member's last suggestion, the latter said that he was also in agreement with the proposal, and he added that the dues should be made payable by money order and also by value payable post.]

Dewan's reply.—Noted.

The Assembly adjourned at 4-50 P. M.

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